

Modern Real Estate Practice in Illinois, 6th Edition
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Chapter 21: Fair Housing and Ethical Practices

Learning Objectives

After reading this chapter, students should be able to:

- Identify the classes of people who are protected against discrimination in housing by various laws.
- Describe how the *Fair Housing Act* is enforced.
- Explain how fair housing laws address a variety of discriminatory practices and regulate real estate advertising.
- Distinguish the protections offered by the *Fair Housing Act*, the *Housing and Community Development Act*, the *Fair Housing Amendments Act*, the *Equal Credit Opportunity Act*, and the *Americans with Disabilities Act*.
- Define the following key terms: *Americans with Disabilities Act*; blockbusting; *Civil Rights Act of 1866*; Code of Ethics; Department of Housing and Urban Development; *Equal Credit Opportunity Act*; ethics; *Fair Housing Act*; *Home Mortgage Disclosure Act*; redlining; steering; U.S. Administrative Law Judge; U.S. District Court Judge; and Title VII of the *Civil Rights Act of 1968*.

Why Learn About Fair Housing and Ethical Practices?

The short answer is because if you don't follow the fair housing laws and ethical practices generally, you could very easily find yourself facing stiff fines, suspensions, and even losing your license. But that's the negative side. On the positive side, understanding and following the fair housing laws, and basic ethical practice, will help create a more diverse, vibrant, and, ultimately, more profitable real estate market for everyone. Excluding customers on the basis of their skin color or religion, for instance, only serves to limit your number of potential customers. In the real estate market, the only color that matters is the color of money.

Suggested Items to Bring to Class

1. A copy of the equal housing opportunity poster.
2. Newspaper articles or periodical articles concerning lawsuits over or prosecutions under the federal fair housing laws.
3. Copies of brochures dealing with nondiscrimination in real estate transactions.
4. Copies of the National Association of REALTORS® Code of Ethics and Standards of Practice.

Lecture Outline

I. Equal Opportunity in Housing

The purpose of civil rights laws is to create a marketplace in which all persons of similar financial means have a similar range of housing choices.

IN ILLINOIS . . . *the Real Estate License Act of 2000 and its General Rules require that all licensees in Illinois fully adhere to the principles of equal opportunity in housing. In addition to the provisions contained in the license act, the rules established by the OBRE prohibit a licensed broker or salesperson from taking any listing or participating in any transaction in which the owner of the property seeks to apply discriminatory standards based on race, color, creed, religion, national origin, sex, physical handicap or familial status.*

Failure to comply with fair housing laws is not only a criminal act but also grounds for disciplinary action against the licensee.

Violations of the provisions or restrictions of the Illinois act or the rules can result in the revocation, suspension or nonrenewal of the violator's license or in censure, reprimand or fine imposed by the OBRE.

The license act requires that when there has been a judgment in either a civil or criminal proceeding that a licensee has illegally discriminated, his or her license must be suspended or revoked, unless the proceeding is still in the appeals process. If there has been an order by an administrative agency finding discrimination by a licensee, the board must also penalize the licensee.

Many cities and villages in Illinois have their own fair housing laws. These laws are enforced on the local level and may take precedence over federal laws when the local law has been ruled substantially equivalent to the federal statute. Many local fair housing laws are stricter or broader than state or federal laws.

- A. **The Civil Rights Act of 1866** prohibits any type of discrimination based on race. Filing a federal lawsuit is the aggrieved party's remedy.

II. Fair Housing Act

- **Title VIII of the Civil Rights Act of 1968:** prohibited discrimination in housing based on race, color, religion, or national origin.
- **Housing and Community Development Act:** added discrimination based on sex in 1974.
- **Fair Housing Amendments Act:** included disability and familial status in 1988.
- The act also prohibits discrimination against individuals because of their association with persons in the protected classes.

A. **Administration.** This law is administered by the Department of Housing and Urban Development (HUD). HUD has established rules and regulations that further interpret the practices affected by the law.

- HUD distributes an equal housing opportunity poster to be prominently displayed in the broker's office.

B. **Definitions**

1. **Housing**

Dwelling which includes any building or part of a building designed for occupancy as a residence by one or more families

2. **Familial status**

The presence of one or more individuals who have not reached the age of 18 and who live with either a parent or guardian, including a pregnant woman a parent with temporary custody of a child or someone seeking foster care status for a child.

3. **Disability**

A physical or mental impairment that substantially limits one or more of an individual's major life activities

- Persons with AIDS are protected under this classification.
- Persons who are current users of illegal or controlled substances are not protected under this law; those who are participating in addiction recovery programs are.
 - a. People with disabilities must be permitted to make reasonable modifications to the premises at their own expense
 - b. For new construction of certain multifamily properties, a number of accessibility and usability requirements must be met under federal law.

C. **Exemptions to the Fair Housing Act**

No exemptions are allowed if discriminatory advertising is used or when a real estate licensee is involved in this transaction.

The *Fair Housing Act* exempts:

- owner-occupied buildings with no more than four units,
- single-family housing sold or rented without the use of a broker, and
- housing operated by organizations and private clubs that limit occupancy to members.

The sale or rental of a single-family home is exempt when

- the home is owned by an individual who does not own more than three such homes at one time (and who does not sell more than one every two years)
- a real estate broker or salesperson is *not* involved in the transaction, and
- discriminatory advertising is not used.

1. Housing for older persons

Housing intended for persons age 62 or older or housing occupied by at least one person 55 years of age or older per unit (where 80 percent of the units are occupied by individuals 55 or older) is exempt from the familial status protection.

2. Jones v. Mayer

1968 U.S. Supreme Court case upholding the Civil Rights Act of 1866.

- The term *race* includes ancestral and ethnic characteristics.

D. Equal Credit Opportunity Act (ECOA)

Prohibits discrimination based on race, color, religion, national origin, sex, marital status, or age in the granting of credit. It also prevents lenders from discriminating against recipients of public assistance programs. ECOA requires that credit applications be considered only on the bases of income, net worth, job stability, and credit rating.

E. Americans with Disabilities Act (ADA)

The ADA requires reasonable accommodations in employment and access to goods, services, and public buildings.

- ADA applies to any employer with 15 or more employees.

F. Title III

Provides for accessibility to goods and services for individuals with disabilities. Building owners and managers must be aware of the compliance requirements of the law.

III. Fair Housing Practices

A. Blockbusting

Encouraging people to immediately list and sell their homes by claiming that the entry of a protected class of people into the neighborhood will have some sort of negative impact on property values.

B. Steering

Steering or channeling of home seekers to or away from particular neighborhoods, either to preserve the demographic character of a neighborhood or to change its character intentionally is a prohibited act.

IN ILLINOIS . . . *The Illinois Real Estate License Act prohibits “Influencing or attempting to influence by any words or acts a prospective seller, purchaser, occupant, landlord or tenant of real estate, in connection with viewing, buying or leasing of real estate, so as to promote, or tend to promote, the continuance or maintenance of racially and religiously segregated housing, or so as to retard, obstruct or discourage racially integrated housing on or in any street, block, neighborhood or community.”*

C. Advertising

No advertisement of property for sale or rent may include language indicating a preference or limitation.

D. Appraising

Race, color, religion, national origin, sex, handicap, and familial status are not factors that may be considered in preparing appraisals or any statements of valuation (including a competitive market analysis).

E. Redlining

Refusing to make mortgage loans or issue insurance policies in specific areas for reasons other than the economic qualifications of the applicants is known as redlining. The Federal Home Mortgage Disclosure Act requires extensive reporting requirements related to location of properties that have been financed by the lender.

F. Intent and Effect

Policies or practices resulting in unequal treatment of persons in the protected classes are considered discriminatory regardless of any innocent intent. The courts will analyze whether the effect of your actions created a “chilling” effect for potential buyers and renters.

IV. Enforcement of The Fair Housing Act

The Office of Fair Housing and Equal Opportunity (OFHEO) administers the federal Fair Housing Act under the direction of the secretary of HUD.

- Any aggrieved person who believes illegal discrimination has occurred may file a complaint with HUD within one year of the alleged act. HUD may also initiate its own complaint.
- The penalties range from up to \$11,000 for the first offense to \$27,500 for a second violation within five years and \$55,000 for further violations within seven years.

- The parties may elect civil action in federal court at any time within two years of the discriminatory act. Unlimited punitive damages can be awarded in addition to actual damages.

V. The Illinois Human Rights Act

Section 18(h) 23 of the Illinois Real Estate License Act prohibits any act that constitutes a violation of the Illinois Human Rights Act, regardless of whether or not a complaint has been filed with or adjudicated by the Human Rights Commission. The Human Rights Act includes some prohibitions that also are specifically addressed by the Real Estate License Act of 2000, such as blockbusting.

A. Prohibited Acts

It is a civil rights violation for an Illinois licensee to engage in any of the following acts, based on discrimination on the basis of race, color, religion, national origin, ancestry, age, sex, marital status, physical disability, military service or unfavorable discharge from military service, or on the basis of familial status:

- Refuse to engage in a real estate transaction with a person
- Alter the terms, conditions, or privileges of a real estate transaction
- Refuse to receive or to fail to transmit an offer
- Refuse to negotiate
- Represent that real property is not available when in fact it is
- Publicize an intent to engage in unlawful discrimination
- Offer, solicit, accept, use, or retain a listing of real property with knowledge that unlawful discrimination is intended

1. Children

It is a civil rights violation for the owner or agent of any housing accommodation to engage in any of the following discriminatory acts against children:

- Require that a prospective tenant not have one or more children under 18
- Insert in any lease a condition that terminates the lease if one or more children younger than age 18 are ever in the family occupying the housing

Any agreement or lease that contains a condition such as these is void regarding that condition.

2. Persons with disabilities

It is a civil rights violation in Illinois to discriminate against any blind, hearing-impaired, or physically disabled person in the terms, conditions, or privileges of sale or rental property. It is a civil rights violation to refuse to sell or rent to a prospective buyer or tenant because he or she has a guide, hearing, or support dog. No additional charge may be added to a lease, rental agreement, or contract of purchase or sale because a blind, hearing-impaired, or physically handicapped person has a service animal.

3. Elderly persons

The Illinois Human Rights Act defines an *elderly person* as any one over the age of 40.

B. Exemptions

- Private owners of single-family homes are exempt if (a) they own fewer than three single-family homes; (b) they were (or a member of their family was) the last current resident of the home; (c) the home was sold without the use of a real estate salesperson or broker; and (d) the home was sold without the use of discriminatory advertising.
- Owner-occupied apartment buildings of five units or less are exempt.
- Private rooms in a private home occupied by an owner or owner's family member are exempt.
- Reasonable local, state, or federal restrictions limiting the maximum number of occupants permitted to occupy a dwelling are permitted.
- A religious organization, association, or society (or any nonprofit institution or organization operated, controlled, or supervised by or in conjunction with a religious organization, association, or society) may limit the sale, rental, or occupancy of dwellings owned or operated by it (for other than commercial reasons) to persons of the same religion, if membership in the religion is not restricted on account of race, color, or national origin.
- Rental of rooms in a housing accommodation may be restricted to persons of one sex.
- The Human Rights Act's antidiscrimination provisions do not protect individuals who have been convicted by any court of illegally manufacturing or distributing controlled substances.
- Appraisers may take into consideration any factors other than those based on unlawful discrimination or familial status in furnishing appraisals.
- Housing for older persons is exempt from the act's provisions

regarding nondiscrimination against individuals on the basis of familial status.

VI. Coercion and Threats

The federal Fair Housing Act protects owners, brokers, and salespersons that aid or encourage the enjoyment of open housing rights. Threats, coercion, and intimidation are punishable by criminal prosecution.

VII. Implications for Brokers And Salespeople

- Fair housing is the law. All parties deserve the same standard of service.
- HUD requires that its fair housing posters be displayed in any place of business where real estate is offered for sale or rent.

VIII. Professional Ethics

Ethics refers to a system of moral principles, rules, and standards of conduct.

A. Code of Ethics

NAR adopted a Code of Ethics and Standards of Practice for its members. REALTORS[®] are expected to subscribe to this strict code of conduct.

Discussion Questions

1. How has fair housing legislation affected your area? In addition to the Illinois and federal fair housing laws, does your county or municipality have additional fair housing laws and antidiscrimination protections? What additional protected classes are included in them that are not included in the federal law?
2. What evidence of the effect of this legislation have you experienced?
3. Why do you think different areas would implement fair housing legislation that included additional protected classes? Why would the federal legislation omit such protected classes?
4. Do you think that a code of ethics improves professional behavior?

Classroom Exercises

1. Have the students relate their personal experiences that might raise questions concerning fair housing and its implications.
2. Arrange for someone to speak with your class about the federal fair housing laws or other fair housing laws in your jurisdiction.
3. Create advertisements for sale or rental property

4. Determine what would be fair compensation if one's civil rights